

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO

- - - - -  
Coordination Proceeding )  
Special Title (Rule 1550(b)). )  
In re TOBACCO CASES II )  
This Document Relates to: )  
 ) JCCP No. 4042  
The People of the State of )  
California, and American ) VIDEOTAPED  
Environmental Safety Institute ) DEPOSITION OF  
v. Philip Morris Incorporated, )  
et al., Los Angeles Superior ) NED F. ROSCOE  
Court, Case No. BC 194217 )  
The People of the State of )  
California, City of San Jose, )  
and Paul Dowhall v. Brown & )  
Williamson Corp., et al., San )  
Francisco Superior Court, Case )  
No. 996781 )  
 )  
SERVICE LIST "B" )  
- - - - -

C O N F I D E N T I A L T R A N S C R I P T

TAKEN ON: Friday, July 7, 2000

TAKEN AT: 401 B Street, Suite 1700  
San Diego, California

REPORTED BY: Jeannette K. Jessup  
CSR No. 8573, RPR

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1 (Whereupon, the following testimony is deemed  
2 confidential material and subject to protective order  
3 entered by the Superior Court of the County of Los  
4 Angeles, State of California and is bound separately.)  
5 BY MR. HULBURT:

6 Q. How many cigarettes does Cigarettes Cheaper sell  
7 in California each day, week, month, year, whatever time  
8 period is best for you to answer?

9 A. I don't know.

10 Q. Can you give me an estimate?

11 A. Yes.

12 Q. What is it?

13 A. Probably 140,000 cartons per week.

14 Q. Has that -- how long or what period of time  
15 would that estimate be a reliable estimate?

16 A. No period of time.

17 Q. Is Cigarettes Cheaper currently selling  
18 approximately 140,000 cartons per week in California?

19 A. Yes, approximately.

20 Q. Okay. And so has that been true for the past  
21 year, that Cigarettes Cheaper sells approximately 140,000  
22 cartons per week?

23 A. I'm struggling with the term "approximately."  
24 Yes.

25 Q. Has it been true for the past three years?

26 A. No.

27 Q. Two years ago was Cigarettes Cheaper selling  
28 more or less than 140,000 cartons per week in California?

25

1 A. Less.

2 Q. And three years ago more or less?

3 A. Less.

4 Q. Can you give me your best estimates of how many  
5 cartons per week Cigarettes Cheaper was selling in those  
6 time periods, two years ago, three years ago?

7 A. Yes.

8 Q. What is it?

9 A. Two years ago maybe 95,000 cartons per week.  
10 Three years ago maybe 80,000 cartons per week. And if  
11 I'm close, I'd like to get a donut out of it.

12 Q. You still have one right in front of you. What  
13 has Cigarettes Cheaper done in those two to three years  
14 that has caused its sale of cigarettes to increase so  
15 much?

16 A. Open more stores.

17 Q. Anything else?

18 A. Been nicer to customers.

19 Q. Anything else?

20 A. Had good prices.

21 Q. Anything else?

22 A. We were the proponents of Prop 28.

23 Q. Did that cause an increase in sales through  
24 Cigarettes Cheaper?

25 A. Yes.

26 Q. Is there some incremental increase that you  
27 attribute to the Prop 28 campaign?

28 A. Yes.

26

1 Q. What is it?  
2 A. I think we sold a little bit more because of  
3 Prop 28.  
4 Q. Yeah, how much? How much more?  
5 MR. BERN: Objection; calls for speculation.  
6 MR. KAMMER: You may answer.  
7 THE WITNESS: Maybe 5,000 cartons more per week.  
8 BY MR. HULBURT:  
9 Q. Is there anything else that Cigarettes Cheaper  
10 did that you think resulted in the increase in sales?  
11 A. Yes.  
12 Q. What is it?  
13 A. We treated customers with respect.  
14 Q. Okay. Anything else?  
15 A. Yes.  
16 Q. What?  
17 A. We didn't allow minors to enter our stores.  
18 Q. How does that increase sales?  
19 A. Customers respect merchants who do the decent  
20 thing.  
21 Q. So you think you have more customers buying more  
22 cigarettes because of whatever steps you've taken to  
23 prevent minors from coming into the store?  
24 A. Yes.  
25 Q. What else has Cigarettes Cheaper done that has  
26 increased sales in California?  
27 A. That's all I can recall at this time.  
28 (Whereupon, this ends the testimony deemed

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1 confidential and subject to protective order entered by  
2 the Superior Court of the County of Los Angeles, State of  
3 California.)  
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1 (Whereupon, the following testimony is deemed  
2 confidential material and subject to protective order  
3 entered by the Superior Court of the County of Los  
4 Angeles, State of California and is bound separately.)  
5 BY MR. HULBURT:

6 Q. What?  
7 A. MapQuest.  
8 Q. To find your store location?  
9 A. Yes.  
10 Q. All right. Anything else?  
11 A. Not that I can recall.  
12 Q. What is the annual budget for operating and  
13 maintaining the Cigarettes Cheaper Website?  
14 A. There is no annual budget for operating the  
15 Cigarettes Cheaper Website.  
16 Q. How much is spent on the Website?  
17 A. I don't know.  
18 Q. Can you give me your best estimate.  
19 A. Including Gen's time and anything we might pay  
20 to Slip Net, I'll guess, \$2,000.  
21 Q. \$2,000 a year?  
22 A. Yes.  
23 (Whereupon, this ends the testimony deemed  
24 confidential and subject to protective order entered by  
25 the Superior Court of the County of Los Angeles, State of  
26 California.)  
27 ////  
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1  
2 (Whereupon, the following testimony is deemed  
3 confidential material and subject to protective order  
4 entered by the Superior Court of the County of Los  
5 Angeles, State of California and is bound separately.)  
6 BY MR. HULBURT:  
7 Q. Does Cigarettes Cheaper have any database of its  
8 customers?  
9 A. Yes.  
10 Q. Identifying its customers? Does the database  
11 identify the customers?  
12 A. Yes.  
13 Q. How is that information obtained?  
14 A. By swiping the driver's licenses.  
15 Q. So when you swipe a driver's license in a  
16 California store to check the I.D., does that also load  
17 into the Cigarettes Cheaper computer system the  
18 identifying information regarding that customer?  
19 A. Yes. And to correct my prior answer, on some of  
20 the coupons that customers fill out, they give us their  
21 name and address. And we put it in our database.  
22 Q. How many customers does Cigarettes Cheaper have  
23 in its database?  
24 A. I think there are 418,000 names. I don't know  
25 how many customers that actually represents.  
26 Q. How many names of Californians are there in the  
27 database?  
28 A. I don't know.

65

1 A. Yes.  
2 Q. What is it?  
3 A. 100,000.  
4 Q. Other than swiping the I.D. cards and customer  
5 filling out a coupon, what other ways does Cigarettes  
6 Cheaper acquire identifying information regarding its  
7 customers?  
8 A. Sometimes we say to the customer "How old are  
9 you?" Other times we say "I'm Ned. What's your name?"  
10 Q. Anything else?

11 A. Managers talk to customers all the time, and the  
12 customers tell managers everything.  
13 Q. Is there any other way that Cigarettes Cheaper  
14 acquires information that ends up in the database  
15 identifying the 418,000 people?  
16 A. No.  
17 Q. Does the database include name and address?  
18 A. Yes.  
19 Q. And date of birth?  
20 A. Yes.  
21 Q. What else?  
22 A. I don't know.  
23 Q. How is the database used by Cigarettes Cheaper?  
24 A. We use it occasionally to waste data processing  
25 resources.  
26 Q. In what way?  
27 A. Well, we don't actually contact the people. But  
28 occasionally we go through various procedures to say how  
66  
1 many people are there or how many are added or things  
2 like that.  
3 Q. For what reason?  
4 A. I think it's because we think that we need to  
5 have a list of -- of customers for some reason that that  
6 would some day be of value.  
7 Q. Was it your decision to institute this data  
8 accumulation?  
9 A. Guilty as charged.  
10 Q. Is that one of the things you're responsible for  
11 as being the person responsible for data processing?  
12 A. I -- actually, I don't know which of us -- well,  
13 that's a -- I went to a trade show in Houston. And we  
14 talked to a vendor who said, "You know, you could do  
15 this."  
16 "Oh, great, let's do it." And I think that's  
17 how we got started doing it.  
18 Q. Has Cigarettes Cheaper ever used the database to  
19 provide information back to the customer?  
20 A. No.  
21 Q. What is the purpose of the database?  
22 A. I think you've asked that and I've answered it  
23 before. The purpose of it now is just to waste time.  
24 Q. How often do you --  
25 A. Well, that's not true.  
26 Q. How often do you run reports from the database?  
27 A. We report the total number of names on the  
28 database every day on the daily sales.

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1 Q. What other kind of reports do you run out of the  
2 database?  
3 A. At one time we used it to prepare voter  
4 registration forms for customer signatures. A year ago.  
5 So I guess it wasn't a complete waste.  
6 Q. And were the cards then provided back to the  
7 customer to sign?  
8 A. Yes.  
9 Q. Mailed to them?  
10 A. No.  
11 Q. Printed in the store?  
12 A. Yes.  
13 Q. Okay. What other kind of reports do you run  
14 from the database?  
15 A. I don't recall any other reports.



16 Q. So the only report is what's the total number of  
17 names in the database?  
18 A. Yes.  
19 Q. Do you obtain reports from the database that are  
20 specific to location or region or community or state?  
21 A. No.  
22 Q. Does the database have any information regarding  
23 which products the customer purchases?  
24 A. Yes.  
25 Q. Tell me about that.  
26 A. Customers who wish to purchase our private  
27 labels, our internal brands, will fill out a general  
28 release statement. And so I know that those names are --  
68

1 are tied to specific products.  
2 Q. Are those names in the same database?  
3 A. You know what, I should go back and correct my  
4 previous testimony. We do use the -- the information  
5 that's collected from the general release to prepare a  
6 card that we send out -- mail back to the customer.  
7 Q. That's a card that the customer then brings into  
8 the store with them to identify that they've already  
9 signed the release?  
10 A. That's correct.  
11 Q. And do they -- do they swipe that card when they  
12 come back in, or they just show it?  
13 A. They just show it.  
14 Q. The purpose of the card is to show that they've  
15 already signed the release?  
16 A. That's correct.  
17 Q. So in this release agreement is that only for  
18 the private label brands?  
19 A. Yes.  
20 Q. And what are the private label brands at  
21 Cigarettes Cheaper?  
22 A. Geronimo, Money, Bandito, Natural, Harvest,  
23 Noble, Peace.  
24 Q. Private label at Cigarettes Cheaper means what?  
25 A. Means a label that we've developed and arranged  
26 for the manufacture of it.  
27 Q. Are those brands sold in any location other than  
28 Cigarettes Cheaper?

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1 A. No. With the exception of some private labels  
2 that have been manufactured by Philip Morris in the past  
3 that we no longer carry but are carried by Admiral  
4 Petroleum in Michigan.  
5 THE REPORTER: Admiral what?  
6 THE WITNESS: Petroleum.  
7 BY MR. HULBURT:  
8 Q. When you say "internal brands," does that mean  
9 the same as private label?  
10 A. Yes.  
11 Q. And does -- does Cigarettes Cheaper ask any of  
12 its customers to sign release agreements for the purchase  
13 of any cigarettes other than the private label?  
14 A. No.  
15 Q. Why not?  
16 A. It's our understanding that the -- the American  
17 cigarette manufacturers have assumed that liability.  
18 Q. In what way?  
19 A. Because when there have been lawsuits like the  
20 one we're in right now, the cigarette companies have paid

21 for the litigation.  
22 Q. Other than specific to any lawsuit, does  
23 Cigarettes Cheaper have any written agreements with  
24 American tobacco manufacturers that the tobacco company  
25 will defend and indemnify Cigarettes Cheaper in the event  
26 of a liability?  
27 A. Yes.  
28 Q. Do you have that with all the American tobacco

70

1 manufacturers?  
2 A. Yes, I think we do.  
3 Q. How long has that been true?  
4 A. I know for the last two, three years we've  
5 provided such documents to our insurance carrier.  
6 Q. How long have you had such agreements?  
7 A. I believe that -- that those agreements have  
8 been in place since the -- before the company was  
9 founded.  
10 Q. Before Cigarettes Cheaper was founded?  
11 A. That's correct.  
12 Q. So the entire time that Cigarettes Cheaper has  
13 been in business, it's your understanding that there's  
14 been an agreement between Cigarettes Cheaper and the  
15 American tobacco manufacturers that the tobacco  
16 manufacturers would defend and indemnify Cigarettes  
17 Cheaper in the event of any liability related to their  
18 products?  
19 A. Was that a question?  
20 Q. Yeah. Is that a true statement?  
21 A. Yes.  
22 Q. Have you had writings that say that, the entire  
23 time Cigarettes Cheaper's been in business?  
24 A. No.  
25 Q. So you've had that in writing for approximately  
26 two or three years?  
27 A. Yes.  
28 Q. Where are those maintained, those agreements?

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1 A. I obtain them and give them to Jay Chapman, who  
2 gives them to the insurance carrier.  
3 Q. And is there a copy kept at Cigarettes Cheaper  
4 somewhere?  
5 A. I don't know.  
6 Q. Who would be the person that would be  
7 responsible for that if they were kept somewhere at  
8 Cigarettes Cheaper?  
9 A. It would either be me or Jay Chapman.  
10 MR. HURBURT: Bill, those are agreements that  
11 we've not received. There's sort of indirect reference  
12 in some of the documents that we have. But we don't have  
13 any of the agreements between Cigarettes Cheaper and any  
14 of the tobacco companies related to indemnity or  
15 defending on the product.  
16 MR. KAMMER: I take your statement to be that  
17 you're telling me the truth that you appreciate it. I'll  
18 bring that up with Brian.  
19 MR. HULBURT: Yeah. Is that something that --  
20 that we can get produced?  
21 MR. KAMMER: I don't know whether they were  
22 called for and what brand's position. I know it's in the  
23 instance of specific agreements as to this lawsuit we've  
24 been producing them. But I'll inquire.  
25 MR. HULBURT: Okay.

26 BY MR. HULBURT:

27 Q. Is it -- well, when you were involved in the  
28 operation of the Cheaper discount markets, did you sell

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1 cigarettes?

2 A. Yes.

3 Q. And how long was that? How long were you  
4 involved in the operation of the Cheaper markets?

5 A. Since before the name was Cheaper.

6 Q. Okay. So give me a time. During what period of  
7 time?

8 A. Probably 1966 on.

9 Q. Until when? When did you sell those stores?

10 A. The last ones were sold July of 1999.

11 Q. And so let's -- if we can cover that entire time  
12 period from 196 -- 1966 to the present then. Was it your  
13 understanding as somebody involved in the sale of  
14 cigarettes that there was always a deal, an agreement  
15 between the retailer and the tobacco -- American tobacco  
16 manufacturers that the tobacco companies would defend and  
17 indemnify the retailer in the event of any liability  
18 related to its products?

19 A. I don't think I ever thought about it. I don't  
20 know that it was very much of a concern until the last  
21 two or three years.

22 Q. When can you say that you first were aware that  
23 there was an agreement like this that we've been  
24 describing between the retailers and the tobacco  
25 companies?

26 A. I'm sure I was aware of it when we first started  
27 purchasing from McClane.

28 Q. When was that?

73

1 A. December of 1996.

2 Q. Okay. And were you aware of it before that?

3 A. I don't recall.

4 Q. Why -- why do you make that timeframe? Why do  
5 you say you're sure when you first started purchasing  
6 from McClane? What happened then?

7 A. Because I know that when we wanted to have  
8 McClane carry American Spirit, that American Spirit had  
9 to provide the indemnification agreement to McClane.

10 Q. Was that the first time you became aware of  
11 indemnification agreements?

12 A. I don't recall.

13 Q. Is there an indemnification agreement with  
14 respect to the Cigarettes Cheaper private label  
15 cigarettes?

16 A. Yes.

17 Q. That's an agreement between who and who?

18 A. Cigarettes Cheaper and Altadis.

19 Q. Does Altadis make all of the private label  
20 cigarettes that are now sold at Cigarettes Cheaper?

21 A. No.

22 Q. Is there -- which brands are made by Altadis?

23 A. Geronimo, Bandito, Noble.

24 Q. And is there an agreement between Cigarettes  
25 Cheaper and Altadis that if there's any liability related  
26 to those brands, that Altadis will indemnify Cigarettes  
27 Cheaper?

28 A. Yes, I believe there is.

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1 Q. Is there any indemnity provided the other way

2 from Cigarettes Cheaper to Altadis?  
3 A. I don't know.  
4 Q. Are the other private label brands made by  
5 either Bailey or Imperial?  
6 A. Yes.  
7 Q. Are there indemnity agreements with Bailey?  
8 A. I don't know.  
9 Q. Which brands are made by Bailey?  
10 A. Revenge, Natural Harvest. I think he puts up  
11 Peace.  
12 Q. Are there any other indemnity agreements with  
13 Imperial?  
14 A. No. Imperial doesn't make any private labels  
15 for us.  
16 Q. What do you get from Imperial?  
17 A. We bought some Du Maurier.  
18 Q. What is that?  
19 A. Du Maurier is the most popular cigarette brand  
20 in Canada.  
21 Q. Does Cigarettes Cheaper operate any stores in  
22 Canada?  
23 A. No.  
24 Q. Do you operate any stores in any other countries  
25 other than America?  
26 A. No.  
27 Q. Is there any agreement or promise or  
28 representation from Cigarettes Cheaper to the customer

75

1 that Cigarettes Cheaper will not use the database in  
2 order to directly contact the customer?  
3 A. No.  
4 Q. Do you know what I mean by that? That "I'll  
5 give you my name if you promise to not send me a whole  
6 bunch of mail." Is there anything like that involved in  
7 the acquiring of identifying information from the  
8 Cigarettes Cheaper customers?  
9 A. No.  
10 Q. Does the --  
11 A. In fact, that's exactly the opposite of the  
12 feeling customers have.  
13 Q. They think they're signing up in order to get  
14 information?  
15 A. Yes.  
16 Q. Okay.  
17 A. Coupons. The information they want are coupons.  
18 Q. Okay. So Cigarettes Cheaper could be even  
19 cheaper?  
20 A. That's right.  
21 Q. Why has Cigarettes Cheaper not used the database  
22 to send information direct to the customers?  
23 A. Because we couldn't get any coupons to send to  
24 the customer.  
25 Q. Coupons from the manufacturer?  
26 A. That's correct. Still haven't had any singing  
27 opportunities.  
28 (Whereupon, this ends the testimony deemed

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1 confidential and subject to protective order entered by  
2 the Superior Court of the County of Los Angeles, State of  
3 California.)  
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1               (Whereupon, the following testimony is deemed  
2 confidential material and subject to protective order  
3 entered by the Superior Court of the County of Los  
4 Angeles, State of California and is bound separately.)  
5               (Exhibit 5022 was marked for identification.)  
6 BY MR. HULBURT:  
7       Q.   All right. Let me show you Exhibit 5022 which  
8 is "Newsletter 129" dated 4-24-2000. It's PTS 88. This  
9 talks about a buy-down agreement between Cigarettes  
10 Cheaper and R.J. Reynolds; is that right?  
11       A.   Yes.  
12       Q.   And is it the practice of Cigarettes Cheaper to  
13 participate in buy-down agreements whenever possible?  
14       A.   Yes.  
15       Q.   And the way the buy down works in general is  
16 that the price per carton is lower to the customer, and  
17 in exchange the tobacco company will pay Cigarettes  
18 Cheaper that amount that the price is reduced?  
19       A.   Yes.  
20       Q.   And this is talking about a situation where  
21 Cigarettes Cheaper is actually going to pay for one week  
22 of the promotion?  
23       A.   Yes.  
24       Q.   Is that something that Cigarettes Cheaper does  
25 on a regular basis?  
26       A.   No.  
27       Q.   Was this a unique instance here in this memo?  
28       A.   Yes.

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1       Q.   Is this the only time it's been done?  
2       A.   Yes.  
3       Q.   Did this result in Cigarettes Cheaper selling  
4 cigarettes below cost?  
5       A.   No.  
6       Q.   What happened here is that for one week  
7 Cigarettes Cheaper dropped the price 4.50 a carton and  
8 absorbed that -- absorbed that cost itself?  
9       A.   Yes.  
10       Q.   Why did Cigarettes Cheaper do that?  
11       A.   So that it could participate in the other weeks.

12 Q. Why was Cigarettes Cheaper so eager to expand  
13 the eight-week buy-down program to ten weeks as explained  
14 in this memo?

15 A. So that we could participate in the R.J.  
16 Reynolds promotion.

17 Q. Well, you could participate in the eight-week  
18 promotion without doing anything extra, right?

19 A. I don't think so.

20 Q. Why?

21 A. It was the first time we had participated in  
22 anything with R.J. Reynolds. And in order to do that, I  
23 had to be as eager as possible to cooperate as much as  
24 possible. That I've had the feeling many times during  
25 those negotiations that if I showed any reluctance at  
26 all, that -- that we wouldn't be able to promote with  
27 them.

28 Q. Was the program that's explained in this memo,  
90  
1 Exhibit 5022, something that was proposed by Cigarettes  
2 Cheaper or something that was proposed by R.J. Reynolds?

3 A. It was proposed by R.J. Reynolds.

4 Q. So in effect the eight-week program became a  
5 ten-week program that R.J. Reynolds paid nine weeks?

6 A. Yes.

7 Q. Okay. And before this time there had never been  
8 a buy down that Cigarettes Cheaper participated in with  
9 R.J. Reynolds?

10 A. No.

11 Q. Is what I said correct?

12 A. No.

13 Q. Okay. You said that this was the first time  
14 that you had done this, or something like that.

15 A. It was the first time since January -- since  
16 December 31st, 1996. No. 1995. December 31st, 1995.

17 Q. What happened then?

18 A. R.J. Reynolds promoted for a three-month period  
19 in late 1995. And then in January of '96 said that they  
20 weren't -- wouldn't promote with us anymore.

21 Q. Why?

22 A. Because we were assigned to a Philip Morris  
23 exclusive contract that R.J. Reynolds was dissatisfied  
24 with. And because contrary to their obligations under  
25 the Robinson-Patman Act, they did not treat us in a fair  
26 and equitable manner.

27 Q. What do you mean an exclusive contract with  
28 Philip Morris?

91  
1 A. Exclusive is a term used in the industry to say  
2 that the -- the most rigorous Philip Morris contract.

3 Q. Is there still an exclusive contract with Philip  
4 Morris?

5 A. No.

6 Q. When did that expire?

7 A. March 31st, 2000.

8 Q. What's the nature of the contract with Philip  
9 Morris now?

10 A. We're now on what's called a Level B.

11 Q. What was the level before?

12 A. Level E.

13 Q. Okay. And so describe for me in general the  
14 exclusive contract with Philip Morris.

15 A. Philip Morris gets all of the window signs that  
16 aren't one-third brand, two-thirds price. They get the

17 top row of all the racks and the signs that are above the  
18 racks. They get 100 percent of the displays at the  
19 register. They get space equal to 90 percent of their  
20 market share. That's generally it.

21 Q. And in exchange for that Cigarettes Cheaper gets  
22 what?

23 A. Monthly display payment and access to additional  
24 promotional funds.

25 Q. How much did Cigarettes Cheaper get from Philip  
26 Morris as a result of that contract?

27 A. I believe we were paid \$1,186 per month per  
28 store.

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1 Q. Over what period of time? Five years?

2 A. No. The amounts change year by year. And half  
3 year by half year depending on volume.

4 Q. So the amount you gave me --

5 A. Works out to about a dollar a carton.

6 Q. For about five years?

7 A. Yes. I think that there was a period in there  
8 when the amount per carton was a little bit lower.

9 Q. Okay. And currently what is the deal with  
10 Philip Morris and Cigarettes Cheaper?

11 A. Works out to be about 40 cents a carton.

12 Q. And in exchange for that Philip Morris gets  
13 what?

14 A. Space equal to share -- their share of the  
15 window signs, their share of the pack and promotional  
16 space.

17 Q. Is there a display agreement with R.J. Reynolds  
18 now?

19 A. Yes.

20 Q. And what is that?

21 A. They get space in excess of their share and a  
22 comparable amount of promotional signage and -- and  
23 window signs.

24 Q. And for that they pay how much to Cigarettes  
25 Cheaper?

26 A. \$173 per month per store. Maybe it's 174.

27 Q. What happened? Why did Cigarettes Cheaper  
28 decide to change its agreement with Philip Morris and --

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1 and strike a new agreement with R.J. Reynolds?

2 A. Because of the amount of the buy downs got to be  
3 4.50 a carton. And 4.50 a carton is much more money than  
4 the display agreement. There was a time when a dollar  
5 per carton was a lot of money. When they promote at 4.50  
6 a carton, it's not as much money anymore.

7 Q. So is Philip Morris promoting at 4.50 a carton?

8 A. Not this week. They were last week.

9 Q. And R.J. Reynolds doing the same?

10 A. They are promoting this week at 4.50 a carton.

11 Q. Okay. So Cigarettes Cheaper decided to, I  
12 guess, follow the promotions figuring out that buy downs  
13 are more advantageous than display agreements?

14 A. That's correct.

15 Q. Is there an agreement with Brown & Williamson?

16 A. Yes.

17 Q. What is that?

18 A. We're going to display 60 cartons of -- of Brown  
19 & Williamson products. And in exchange we'll get a \$3  
20 buy down on Kool. \$2 in addition to a reduced price on  
21 -- on Viceroy and I think it's \$4 on Misty.

22 Q. Is that a new deal?  
23 A. Yes. Started today.  
24 Q. And was there a deal with Brown & Williamson  
25 before?  
26 A. I don't think that Brown & Williamson -- well,  
27 in 1996 I believe that we had a display contract with  
28 Brown & Williamson.

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1 Q. Is there an agreement between Cigarettes Cheaper  
2 and Lorillard?

3 A. No. We don't have a display agreement. We're  
4 able to participate in Lorillard promotional programs  
5 because California law requires that -- that there not be  
6 any secret deals. And we've communicated that to the  
7 cigarette companies. And so I expect that in -- in  
8 response to that Lorillard is allowed us to participate  
9 in the deals. I expect we'll be on contract soon,  
10 though.

11 MR. EATON: The testimony regarding the buy-down  
12 agreements is designated as confidential pursuant to the  
13 protective order.

14 BY MR. HULBURT:

15 Q. Are there any display agreements with any other  
16 tobacco manufacturers and Cigarettes Cheaper?

17 A. No.

18 Q. Have there been in the past?

19 A. Yes.

20 Q. Tell me about that.

21 A. I think we had a deal with Commonwealth at one  
22 point.

23 Q. What brands does Commonwealth have?

24 A. They have the Old American tobacco brands, Monte  
25 Claire, Natural Blend. That's all I recall at this time.  
26 Bull Durham.

27 Q. Did Cigarettes Cheaper sue R.J. Reynolds over  
28 some dispute about whether or not R.J. Reynolds was

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1 treating Cigarettes Cheaper fairly with respect to the  
2 display agreements or buy-down agreements?

3 A. We filed a countersuit to the trademark action  
4 by R.J. Reynolds.

5 Q. In the Chicago case?

6 A. Yes.

7 Q. And what is Cigarettes Cheaper's claim in that  
8 countersuit?

9 (Whereupon, this ends the testimony deemed  
10 confidential and subject to protective order entered by  
11 the Superior Court of the County of Los Angeles, State of  
12 California.)

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2           (Whereupon, the following testimony is deemed  
3 confidential material and subject to protective order  
4 entered by the Superior Court of the County of Los  
5 Angeles, State of California and is bound separately.)  
6 BY MR. HULBURT:  
7       Q.   Why is there a bar code on the card?  
8       A.   Our earlier discussion was that we were going to  
9 identify and track the purchases by customer.  
10       Q.   So at one time the thought was maybe we could  
11 give all of our customers a card, identify them and put a  
12 bar code on it, and then be able to send them coupons  
13 that they might like? Was that the thought process?  
14       A.   No.  
15       Q.   Was there a plan at one time to try to identify  
16 all of the store's customers and get every customer a  
17 card?  
18       A.   No.  
19       Q.   Okay. Can you explain to me your answer then  
20 when you said this relates back to our earlier  
21 discussion?  
22       A.   At one time the thought was that we would record  
23 transactions and keep track of customer purchasing  
24 behavior. Upon reflection, given the other things that  
25 we had to get done, decided not to waste our time doing  
26 that.  
27       Q.   How much business does Cigarettes Cheaper do in  
28 the internal brands?

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1       Q.   Can you answer that same question with respect  
2 to California?  
3       A.   No.  
4       Q.   Can you give me an estimate for California  
5 internal brand sales?  
6       A.   Yes.  
7       Q.   What is it?  
8       A.   15,000 cartons a week.  
9       (Whereupon, this ends the testimony deemed  
10 confidential and subject to protective order entered by  
11 the Superior Court of the County of Los Angeles, State of  
12 California.)  
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2           (Whereupon, the following testimony is deemed

3 confidential material and subject to protective order  
4 entered by the Superior Court of the County of Los  
5 Angeles, State of California and is bound separately.)  
6 BY MR. HULBURT:  
7 Q. Does Cigarettes Cheaper sell more than 20  
8 percent of all cigarettes in the United States?  
9 A. No.  
10 Q. Do you know what percentage of the cigarettes  
11 sold in the United States are sold by Cigarettes Cheaper?  
12 A. Yes.  
13 Q. What is that?  
14 A. A little less than 1 percent  
15 (Whereupon, this ends the testimony deemed  
16 confidential and subject to protective order entered by  
17 the Superior Court of the County of Los Angeles, State of  
18 California.)  
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1 (Whereupon, the following testimony is deemed  
2 confidential material and subject to protective order  
3 entered by the Superior Court of the County of Los  
4 Angeles, State of California and is bound separately.)  
5 BY MR. HULBURT:  
6 Q. How much business does Cigarettes Cheaper do in  
7 selling tobacco-related gear?  
8 A. Maybe \$1,000 a week.  
9 Q. Was it higher at some time before the closeout?  
10 A. Yes.  
11 Q. How much?  
12 A. I don't know.  
13 Q. Before the Master Settlement Agreement, how much  
14 did Cigarettes Cheaper do in the sale of tobacco company  
15 gear?  
16 A. We may have done \$10,000 a week in our peak  
17 week.  
18 Q. Company wide or per store?  
19 A. Company wide. I'm going to volunteer some  
20 information here. The gear program has always been  
21 really lame. People want it for free. They don't want  
22 to pay for it.  
23 (Whereupon, this ends the testimony deemed  
24 confidential and subject to protective order entered by  
25 the Superior Court of the County of Los Angeles, State of  
26 California.)  
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